Map.

SUPREME COURT OF THE UNITED STATES.

No. ~~285~~. 129. 46.

WILLIAM GLASGOW, JR., AND WILLIAM C. TAYLOR, SURVIVING COMMISSIONERS OF THE 16TH SECTION IN TOWNSHIP 45 NORTH, OF RANGE 7 EAST, PL'FFS IN ERROR,

vs.

CHRISTOPHER McLURE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

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Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judges of the Supreme Court of the State of Missouri, greeting:

[SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at March term, A. D. 1859, between William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, plaintiffs, and Christopher C. McLure, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 10th day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 23d June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State aforesaid, held at St. Louis, do herewith transmit to the Supreme Court of the United States, at Washington, in obedience to the within writ, a full, true and perfect transcript of the record and proceedings in the case of William Glasgow, junior, and William C. Taylor, commissioners of the 16th section, township 45, &c.,

plaintiffs, against Christopher C. McClure, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal of said court, at office in Saint Louis, this fifteenth day of August, A. D. 1859.

[SEAL.]

WM. S. GLANVILLE, *C'k.*

THE STATE OF MISSOURI, *ss.*

Be it remembered, that on the 19th day of February, in the year 1858, there issued from the office of the clerk of the supreme court, of said State, held at St. Louis, a writ of error in words and figures as follows:

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the honorable the Circuit Court, held in and for the county of St. Louis, in said State, greeting:

Whereas, in the record and proceedings in a certain cause lately pending in the said court, wherein William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the 16th section in township 45, are named as plaintiffs, and Christopher C. McClure, defendant, in a suit for the recovery of land, manifest error hath intervened to the great damage of said plaintiffs, as by their complaint we are informed: Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, command you, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March next, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness William S. Glanville, clerk of our said supreme court, at office, in the city of St. Louis, the 19th day of February, 1858.

[SEAL.]

WM. S. GLANVILLE, *Clerk.*

Said writ was duly returned, endorsed as follows:

STATE OF MISSOURI,
County of St. Louis, ss.

In obedience to the within writ, I herewith transmit a true and complete transcript of the record and proceedings in the within named cause.

In testimony whereof, I hereto set my hand, and affix the seal of said court, at office in the city of St. Louis, this 25th [SEAL.] day of Feb'y, 1858.

STEPHEN RICE, *Clerk.*

Notice of Writ of Error.

Accompanying said writ when returned was a notice, which is in words and figures as follows:

In St. Louis Circuit Court.

WILLIAM MILBURN and al., Comm'rs, &c.
vs.
CHRISTOPHER C. McCLURE.

Notice is hereby given to the defendant, that a writ of error has been sued out by the plaintiffs in the above entitled cause, returnable to the supreme court at its next term at St. Louis, on the 3d Monday in March next.

Feb'y 22d, 1858.

R. M. FIELD,
For Plaintiffs.

Acknowledgment of Service by Defendant.

I acknowledge service of the above notice.

C. C. McCLURE.

The transcript aforesaid, attached to said writ of error, was filed in the office of the clerk of the supreme court on the 26th February, 1858, and is in the words and figures as follows:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that at the October term, 1855, of the circuit court within and for the county aforesaid, a transcript was filed, which is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on the fifteenth day of September, in the year of our Lord 1853, there was filed in the office of the clerk of the St. Louis land court a petition, which is in the words and figures following, to wit:

In the St. Louis Land Court—St. Louis County.

WILLIAM MILBURN, WILLIAM GLASGOW, Jun., and William C. Taylor, Commissioners of the sixteenth section of township forty-five north, range seven east, Plaintiffs,
against
CHRISTOPHER C. McCLURE, Defendant.

The plaintiffs state that on the 11th day of April, 1851, they were duly appointed commissioners, as aforesaid, by the St. Louis county court, pursuant to the provisions of an act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved March 3, 1851; that, as such commissioners, the plaintiffs were, on the first day of January, 1853, lawfully entitled to the possession of that tract of land situate in St. Louis county, known and described as the fractional section sixteen of township forty-five north, in range seven east, according to the surveys of the public lands of the United States, and still continue so entitled; that afterwards, on the second day of January, 1853, the defendant had entered into said tract of land, and enclosed with fences about forty acres, parcel of said sixteenth section, and still unlawfully withholds the possession of such parcel from the plaintiffs, to their damage three hundred dollars. The plaintiffs pray for judgment for the possession of said parcel of land, and for their damages aforesaid, and for damages for the detention thereof until the possession be delivered to them.

By their attorneys,

FIELD, WILLIAMS & BATES.

Willis L. Williams, attorney for the plaintiffs, being duly sworn, on his oath, says that he believes the foregoing petition and matters therein, as stated, to be true.

WILLIS L. WILLIAMS.

Sworn to and subscribed before me, this 15th day of September, 1853. Witness my hand and seal at office, St. Louis.

CHARLES G. MAURO, *Notary Public.*

Summons.

Upon which a summons issued, in the words and figures following, to wit:

The State of Missouri to the Sheriff of St. Louis county, greeting:

We command you to summon Christopher C. McClure to appear before the judge of our St. Louis land court, on the first Monday of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section, township forty-five north, of range seven east, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this 15th day of September, in the year of our Lord 1853.

[L. S.]

CHAS. A. MANTZ, *Clerk.*

On which the sheriff made return as follows:

Executed this writ in the county of St. Louis on the 16 day of September, 1853, by delivering a copy of the within writ and petition, as furnished by the clerk, to the within named defendant, Christopher C. McClure.

JNO. M. WIMER, *Sh'ff.*
By THOS. CHADBURNE, *Deputy.*

Plea of Misnomer filed.

Afterwards, on Friday, October 7th, 1853, the following plea was filed herein:

Christopher C. McLure, against whom the said plaintiffs have exhibited their summons and petition by the name of Christopher C. McClure, comes in person and says, that he is named and called Christopher C. McLure, and by the said surname of McLure hath always hitherto been called and known; without this, that he now is or ever was named or called by the surname of McClure, as by the said summons and petition is supposed, which he is ready to verify, &c. Where he prays judgment, &c., and that said summons and petition may be quashed.

C. C. McLURE.

Sworn to and subscribed before me, this 7 day of October, A. D. 1853.

CHARLES A. MANTZ, *Clerk.*

Motion for Judgment.

Afterwards, during said term, to wit, on Wednesday, the 12th of October, 1853, the plaintiffs filed a motion for judgment in this cause in words and figures as follows:

The plaintiffs move the court to enter up judgment in this cause for the plaintiffs, because—

1. There is no answer filed, and the paper filed and marked as a "plea of misnomer" is unauthorized by law, and contains in itself no matter of defence to the action.
2. The "plea of misnomer" is altogether frivolous and unimportant.

FIELD, BATES & WILLIAMS.

Motion to strike out Answer, and for Judgment.

Afterwards, on the 13th day of October, 1853, the following further proceedings were had herein, to wit:

Plaintiffs move the court to strike out the defendant's answer, and enter judgment against him, because the answer filed is frivolous and unimportant, and contains in itself no defence to this action.

FIELD, WILLIAMS & BATES, *p. q.*

Judgment on Motion.

Afterwards, on Friday, the 14th of October, 1853, the following further proceedings were had herein, to wit:

Now, at this day come the said parties, by their attorneys, and the motion filed herein by plaintiffs to strike out defendant's answer, and for judgment, being heard, and by the court fully understood, the court doth determine and adjudge, that so much of said motion as asks to strike out defendant's answer be sustained, and that the other part of said motion as asks for judgment be overruled.

Demurrer.

And afterwards, to wit, on the same day, the defendant filed a demurrer to the plaintiffs' petition, which being heard, and by the court fully understood, the court doth overrule said demurrer; which demurrer is in the words and figures following, to wit:

The defendant demurs to the plaintiffs' petition:

1st. Because the plaintiffs have not legal capacity to sue, in this: said act referred to in plaintiffs' petition, approved 3d March, 1851, does not authorize plaintiffs to commence suit against adverse claimants in their own names to any portion of said fractional section sixteen; that said petition does not show that plaintiffs are authorized to institute suit; that said act does not show or declare any title in the State, nor right to the possession of said section; that said petition does not show for what purpose plaintiffs were appointed commissioners, nor for what purpose or reason plaintiffs are entitled to the possession of said fractional section; that said petition does not show any approval of the county court of St. Louis county, authorizing plaintiffs to appoint or employ attorneys to prosecute suit, &c., according to the requirements of said act; that said act was repealed by an act entitled "An act to provide for the organization, support, and government of the common schools in the State of Missouri," approved 24 February, 1853.

2d. Because the petition does not state facts sufficient to constitute a cause of action, in this: said petition does not state what part or parcel of said fractional section sixteen defendant had entered into, &c., and unlawfully withholds the possession from plaintiffs.

J. A. GOODLETT,
Att'y for Def't.

Defendant's Answer.

Afterwards, on the 15th day of October, 1853, the defendant filed an answer to plaintiffs' petition, which is in words and figures as follows:

The defendant, for answer, says he knows nothing of his own knowledge of the appointment of plaintiffs by the county court of

St. Louis county, as commissioners, as is stated in plaintiffs' petition, pursuant [to the] act referred to by the plaintiffs in their petition.

Defendant is in the possession of about five arpens and a half of land in the Grand Prairie of St. Louis, which is part of a common-field lot in said Grand Prairie, which was confirmed to Pierre Barribeau by [virtue] of Congress, approved 13 June, 1812, and a supplemental act thereto, approved 26 May, 1824. Under and according to the requirements of said act of 1824, the said Pierre Barribeau regularly proved up and established his claim to said land before Theodore Hunt, U. S. recorder of land titles, as appears by reference to an authenticated copy of said proof and certificate granted said Barribeau, hereto annexed, marked Exhibit A, and prayed to be taken as part of this answer. Defendant does not know where the original certificate is; which said comm-field lot contains sixty arpens, being one and a half by forty arpens.

Defendant states that he holds title to said about five arpens and a half, to a larger portion of said tract, by deeds of conveyances, and which he believes to be perfect and good titles, by a regular chain of title and conveyances from the legal representatives of said Baribeau and their assigns, regularly down to defendant, but has never reduced the same to actual possession since his said purchases except as aforesaid, the same being in the possession of tenants under lease from defendant's grantor.

Defendant states that he holds possession as aforesaid under the said claim of Pierre Barribeau, &c.

Defendant does not know where the lines of said fractional section sixteen are claimed to run through the said Baribeau tract, nor whether or not any such fractional section has ever been legally located at all; but he supposes that said five arpens and a half is within the boundaries of where the lines of said fractional section *is* claimed to run by plaintiffs.

Defendant denies substantially that plaintiffs were entitled to possession of said five arpens and a half, or any other portion of said common-field lot confirmed as aforesaid to P. Baribeau, as stated in their petition, on the first day of January, 1853, or at any other time before or since that time.

Defendant is in possession of no other land within the boundaries of said fractional section, except as above stated, and defendant denies that plaintiffs are entitled to any damages against him as stated in their petition.

J. A. GOODLETT,
Att'y for Def't.

Christopher C. McLure, defendant, makes oath and says, that he believes the above answer and the matters therein as stated are true.

C. C. McLURE.

Sworn to and subscribed before me, this 15th October, 1853.
CHAS. A. MANTZ, *Cl'k.*

Exhibit A, made part of Answer.

Testimony relating to town and village lots, and lots, and common-field lots, in, adjoining and belonging to the several towns and villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, Ste. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed 26 May, 1824.

THEODORE HUNT,
Recorder Land Titles.

Pierre Baribeau claimed one and a half by forty arpens in Big Prairie, St. Louis, bounded on the north by a lot formerly belonging to Benito Vasquez, on the south by Joseph Lacroix, and on the east and west by vacant land.

Louis Lacroix, being duly sworn, says he knows said lot, and that the claimant, Baribeau, has been in possession of the same for thirty years, and cultivated the same for ten or twelve consecutive years.

his
JOSEPH ⋈ LACROIX.
mark.

Test: M. P. LEDUC.

Sworn to before me.

THEODORE HUNT,
Recorder Land Titles.

See Hunt's minutes, No. 1, pages 1 and 4.

OFFICE OF RECORDER LAND TITLES,
St. Louis, 7 October, 1853.

The above is correctly transcribed from the books on file in this office, containing the testimony taken by Theodore Hunt, recorder of land titles in the State of Missouri, pursuant to the 1st section of the act of Congress approved 26 May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri.' "

ADOLPHE RENARD,
U. S. Recorder of Land Titles, State Missouri.

P. Baribeau's Claim.

***Registry** of Certificates of Confirmation of town-lots, out-lots, and common-field lots, issued by the Recorder of Land Titles.*

In whose name issued.	Date.	Situation.	Remarks.	Quantity.
Pierre Baribeau.	March 3d, 1825.	St. Louis. Big Prairie.	Bounded on the north by a lot formerly belonging to Benito Vasquez, on the south by Joseph Lacroix, and east and west by vacant land.	One and a half by forty arpens.

RECORDER'S OFFICE,
St. Louis, 7 *October*, 1853.

The above is correctly transcribed from the list on file in this office, which list was made in pursuance of the 3d section of the act of Congress approved the 26 May, 1824, supplementary to the act of Congress of the 13 June, 1812, entitled An act making further provision for settling the claims to land in the Territory of Missouri.

ADOLPHE RENARD,
U. S. Recorder of Land Titles, State of Missouri.

And aftewards the following further proceedings were had, to wit, on Saturday, October 15th, 1853.

This cause is continued until the next term.

Petition for Change of Venue.

Afterwards, at the March term, 1854, to wit, on the 13 March, 1854, the defendant filed a petition for a change of venue in this cause, in the words following, to wit:

And now at this day the defendant presents his petition for a change of venue, and satisfies the court that due notice of the presentation thereof has been given, and the said petition containing the allegation that the mind of the judge is prejudiced against the defendant's interest, and in favor of the plaintiffs in this cause, and that the judge of this court has been of counsel for the plaintiffs in this cause, touching the title to the land involved in this cause, to wit, the sixteenth section of township forty-five north, range seven east; and the same being supported by his affidavit, it is ordered by the court that the prayer of the petitioner be granted, and that the clerk of this court make out a full transcript of the record and proceedings in this cause according to law, to the circuit court of St. Louis county. Which petition is in words and figures as follows:

Petition for Change of Venue.

The said defendant petitions the court for a change of venue in this cause, and to certify this cause to the circuit court of said county of St Louis, according to law, for the following reasons: first, because the mind of the judge of this court is prejudiced in this cause against defendant's interest, and in favor of said plaintiffs; second, because the judge of this court has been of counsel for the plaintiffs in this cause, touching the title of the land involved in this suit.

J. A. GOODLETT,
Att'y for Def't.

Said defendant, Christopher McLure, makes oath, and says that the above petition and the matters therein as stated he believes to be true; and he has just cause to believe that he cannot have a fair trial on account of the causes alleged in the above petition.

C. C. McLURE.

Sworn to and subscribed before me this 11th March, 1854.
CHAS. A. MANTZ, *C'k.*

Certificate of Clerk of Land Court.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Charles A. Mantz, clerk of the St. Louis land court, in and for said county of St. Louis, certify the foregoing to be a full transcript of the record and proceedings in the cause, wherein William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section of township forty-five north, range seven east, are plaintiffs, and Christopher C. McLure is defendant, as the same remains of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 31st day of August, 1854.
[SEAL.]

C. A. MANTZ, *Clerk.*

Continued.

And afterwards, this cause was continued until the next term of this court, to wit, October term, 1856.

C ntinued.

And again, at the October term, 1856, this cause was again continued until the next term of this coutt, to wit, to the March term, 1857.

Continued and set for Argument.

And afterwards, at said March term, this cause was again continued, and the following further proceedings were had, to wit:

On motion of the parties herein, it is ordered by the court that

this cause be set for the second Monday of the next term of this court.

Trial.

And afterwards, the following further proceedings were had at the October term, 1857, of said court, to wit:

October 16th, 1857.

Now, at this day, come said parties, by their respective attorneys, and thereupon come also a jury, to wit: N. Barnum, Henry Bischoff, Michael Cook, Frederick Meyer, Peter Meyer, William Nalley, Herman Meyer, G. Herman, Sand G. Bull, Charles M. O'Hara, Ladden Davis, and George W. Fisher, twelve good and lawful men, who being duly elected, tried, and sworn, the issues herein joined well and truly to try, the trial of this cause progressed; but not being concluded, is laid over until to-morrow.

Judgment.

October 17th, 1857.

Now, at this day, come again said parties, by their respective attorneys, and the jury sworn and empanelled herein also came, and the trial of this cause progressed, and the jurors aforesaid, on their oaths aforesaid, find the issue herein joined in favor of said defendant. It is therefore considered by the court that said plaintiffs take nothing by their said suit in this behalf, but that defendant go hence without day and recover against said plaintiffs his costs and charges herein expended, and have thereof execution.

Motion for New Trial overruled.

Thereafter, on the 19th of October, said plaintiffs filed a motion for a new trial, which by the court being fully considered, is overruled.

Bill of Exceptions.

Thereupon said plaintiffs filed a bill of exceptions, which is as follows, to wit:

This case was tried by a jury on the 16th day of October, 1857. On the trial the plaintiffs, to maintain the issue on their part, gave in evidence the act of Congress, approved March 6th, 1820, entitled "An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories." Also an ordinance of the people of the State of Missouri, passed in convention on the 19th day of July, 1820, entitled "An ordinance declaring the assent of the people of the State of Missouri, by their representatives in convention assembled, to certain conditions and provisions in the act of Congress of the sixth of March, 1820, en-

titled "An act to authorize the people of Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories." And also an act of the general assembly of the State of Missouri, approved March 3d, 1851, entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east."

Appointment of Commissioners.

The plaintiffs then read in evidence the record of St. Louis county court, appointing the plaintiffs commissioners under the last mentioned act, as follows:

In the St. Louis County Court, April 11th, 1851.

STATE OF MISSOURI,
County of St. Louis.

The court appoint William Milburn, William Glasgow, jr., and William C. Taylor, commissioners to take possession of section number sixteen, township forty-five north, range seven east, and to sell the same, or any part thereof, on such terms and in such manner as the court shall hereafter direct; the said commissioners having all the powers and subject to all the restrictions of the act of the general assembly of the State of Missouri, entitled "An act to authorize the sale of fractional section sixteen, township forty-five, range seven east," approved March 3d, 1851.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Josiah Thornburg, clerk of the county court within and for the county of St. Louis, hereby certify that the forgoing is a true copy from the record of said court in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court at office, in the city of St. Louis, this 29th day of September, 1857.

[SEAL.]

JOSIAH THORNBURG,
Clerk.

Field-notes of Brown's Survey frac. sec. 16.

The plaintiffs then read in evidence the field-notes of Brown's survey of fractional section 16, made in 1818, as follows:

From a point in widow Camp's N. boundary 15.75 westerly of Pettier's west line, where set a post, from which a b. o. 3 inch. diam. bears N. 39 W. 58 l., and a do. 3 inch. diam. bears S. 19 W. 100 l.; north between secs. 15 and 16, T. 45 N., R. 7 E., 9.53, set ¼ sec. post, from which a w. o. 3 in. diam. bears N. 2 E. 25 l., and a do. 3 in. dia. bears N. 89 E. 21 l. 29.53, the west edge of a pond 2 chs. wide, 49.50, set post corner to secs. 9, 10, 15, and 16,

in a mound; west between secs. 9 and 16, T. 45 N., R. 7 E., 40.00, set ¼ sec. post in a hazel thicket; 80.00 set post corner to secs. 8, 16, and 17, in a hazel thicket mound; land lies well; good soil; und. gth., hazel and bushes; south between secs. 16 and 17, T. 45 N., R. 7 E., 40.00, set ¼ sec. post in mound, 42.00, a branch 5 l. wide bears southerly 44.00, left branch bearing S. E. 51.00, a spring branch bears east 57.69; intersected E. Yoste's 80 arpent tract 7 chs. W. of his N. E. corner on Chouteau; set stone. Land gently rolling prairie.

OFFICE OF SURVEYOR GENERAL OF
ILLINOIS AND MISSOURI,
St. Louis, Oct. 9th, 1857.

The above is a correct copy from book 23, and pages 180 to 183 of the field-notes of Missouri surveys on file in this office, of the original field-notes of the lines between sections 15 and 16, 9 and 16, and 16 and 17, of township 45 north, range 7 east, of the 5th principal meridian, as said lines were surveyed in 1818 by Jno. [Joseph] C. Brown, under contract of 31 March, 1817.

JNO. LOUGHBOROUGH,
Surveyor General.

The plaintiffs then exhibited in evidence an authenticated plat of township 45 north, range 7 east, certified by the surveyor general of Illinois and Missouri the 17th of June, 1845, to be a true copy and an authenticated plat and description of the survey of the out-boundary of the town of St. Louis, as established by the surveyor general.

It was agreed between the parties that authenticated copies of the foregoing township and out-boundary plats, from the office of the surveyor general or the General Land Office, at Washington, may be used before any appellate court to which this case may be carried, with the effect as if the same were set forth in this bill of exceptions at large. The defendant admitted that the land in controversy lay without the exterior limits of said out-boundary survey. The defendant further admitted, that at the commencement of this suit he was in possession of a part of said fractional sixteenth section as stated in his answer. The plaintiffs then rested.

Defendant's Case.

The defendant, to maintain the issue on his part, read in evidence the act of Congress entitled "An act making further provisions for settling claims to land in the Territory of Missouri," approved June 13, 1812; and also the act of Congress entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,' approved May 26, 1824."

The defendant then offered in evidence the proceedings of Recorder Hunt under said act of May 26th, 1824, in respect to the claims of Pierre Barribeau's representatives. The plaintiffs objected to the reception of said evidence, and insisted that the same was incompetent: First. Because, in so far as said proceedings can in any wise affect the land now in controversy, the same were had, and the proofs therein taken without any notice to the State of Missiouri, to the inhabitants of township forty-five, or to the plaintiffs. Second. Because proceedings, so far as they affect the land in dispute, were repugnant to the Constitutions of the United States and of this State, and in derogation of the sovereignty of the latter. The court decided that the proffered evidence was competent and legal, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said proceedings and proofs were then read to the jury, as follows: (See ante, .)

The defendant then offered in evidence an authenticated copy of list from surveyor general's office of the confirmation furnished that office by the recorder of land titles, which is as follows:

No. 5.—*Pierre Barribeau.*

1825. March 3d.	St. Louis. Big Prairie.	Bounded on the north by a lot formerly belonging to Benito Vasquez; on the south by Joseph Lacroix; and east and west by vacant lands.	Arpens, one and a half by forty.

RECORDER'S OFFICE,
St. Louis, October 15th, 1827.

I, Theodore Hunt, recorder of land titles in the State of Missouri, do certify the foregoing record, contained in forty-seven pages, commencing with Louis Lernand, and ending with the field-lot of Titus Strickland, contains all the village lots, out-lots, and common-field lots, the boundaries of which have been proven before me, under the provisions of an act of Congress approved the 26 May, 1824, entitled "An act supplementary to an act passed on the 13 day of June, 1812, entitled 'An act making further provision for settling the claims land in the Territory of Missouri.' "

(Signed) THEODORE HUNT.

OFFICE OF SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, December 5th, 1854.

I hereby certify that the above date in relation to the claim of Pierre Baribeau, in the Big or Grand Prairie common-field of St. Louis, and the annexed certificate by the recorder of land titles, are correctly copied; the former from page 1, and the latter from pages 48 and 49, of a list in this office, which list was returned to the surveyor general by the said recorder, pursuant to the 3d section of the act of Congress of the 26 May, 1824, and referred to in the above certificate.

JNO. LOUGHBOROUGH,
Surveyor General.

The defendant then tendered in evidence a paper, purporting to be a survey, duly certified by the surveyor general, of the lot of Pierre Barribeau's representatives, as proved before Recorder Hunt in the proceedings just before set forth, and being U. S. survey No. 1,663.

Objection.

The plaintiffs objected to the reception of such paper, because—

1st. The survey in manner and form as the same appeared to have been made was not authorized by law.

2d. Said survey embraced the land in controversy, which the United States had absolutely sold and granted to the State of Missouri more than thirty years before the date of such survey. The court decided that said paper was good and competent evidence, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said paper was then read as follows:

Survey No. 1,663.

Survey No. 1,663.

Plat and description of the survey of a tract of land of 51.13 acres, situate in the Grand Prairie common-field of St. Louis, in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, executed in the years 1850 and 1855, by William H. Cozens, deputy surveyor, under instructions from the surveyor general of Illinois and Missouri, dated the 9th day of May, 1846, and the 22d of February, 1855; this being the tract of 1½ by forty arpens, confirmed to Pierre Barribeau by the act of Congress of the 19th June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri," the extent and boundaries whereof were proven on the 3d of March, 1825, before Theodore Hunt, United States recorder of land titles in the State of Missouri, in conformity with the provisions

of the act of Congress of the 26 May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, one thousand eight hundred and twelve, entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri.' " See Recorder Hunt's minutes, book No. 1. page 4, in the office of the recorder of land titles. See also on Hunt's list No. 5, in the surveyor general's office.

T. 45 N., R. 7 east, of the 5th Principal Meridian.

[*For Plat see original, page* 23.]

Description: Beginning at a stone 11 inches long, 9 inches wide, 3½ inches thick, the southeast corner of the Benito Vasquez survey numbered 1,662, and the northeast corner of this survey; thence north 61° west, with the southern boundary of the Benito Vasquez survey, at four chains and 79 links, the eastern edge of Grand Avenue; at 5 chains and 9 links the western edge of Grand Avenue; at 10 chains and 12 links the east side of a brick stable; at 10 chains and 40 links the west side of the stable; at 16 chains and 54 links the northwest corner of Mr. McClure's garden; at 33 chains and 32 links a branch five links wide, runs southwest; at forty-four chains and five links a branch five links wide, runs southwest; at 59 chains the top of a ridge, which bears north and south; at 61 chains and 3 links, a stone 15 inches long and ten inches wide, and four inches thick, at the intersection with the north boundary of section 16, in township 45 north, range 7 east, which is also a line of survey numbered 2,499, in the name of Martin Coontz, or legal representatives, from which the corner common to the Martin Coontz survey, and to survey numbered 2,712, in the name of James Conway, or legal representatives, bears westerly three chains and 90 links distant; at 65 chains and 50 links a stone, at the intersection with the line between the Martin Coontz and the James Conway surveys, from which the corner common to said surveys bears southerly two chains and sixteen links distant; at seventy-six chains and fifty-nine links a branch five links wide, runs southwest; at 97 chains and four links the east edge of a pond; at 99 chains and 29 links the west edge of the pond; at one hundred and one chains and nine links a stone, at the intersection with the line between the James Conway survey and survey numbered 2,692, in the name of Joseph Genereux, or legal representatives; at 110 chains and 30 links a point in the middle of the Olive street plank road; and at 116 chains and 78 links a stone ten and a half inches long, six inches wide, and four inches thick, the southwest corner of the Benito Vasquez survey, and the northwest corner of this

survey; thence south 28 degrees and 45 minutes west; at 46 links a stone, about ten inches long, nine inches wide, three inches thick, at the intersection with the line between the Joseph Genereux survey and survey numbered 2,500, in the name of Joseph Hunot, or legal representatives; and at four chains and 37½ links a stone, and a half inches long, 8½ inches wide, and three inches thick, the northwest corner of Louis Lacroix's survey, numbered 1,664, and the southwest corner of this survey; thence south 61 degrees east, with the northern boundary of the Louis Lacroix survey; at two chains and twelve links a stone, nine inches long, six inches wide, four inches thick, at the intersection with the line between the Joseph Genereux and the Joseph Hunot surveys, from which the corner common to the Joseph Genereux and the James Conway surveys bears southerly two chains and 78 links distant; at 7 chains and 82 links a stone, 11 inches long, and seven inches wide, and three inches thick, at the intersection with the line between the Joseph Genereux and the James Conway surveys, from which the corner common to said surveys in the line of Joseph Hunot's survey bears northerly five chains and two links distant; at 12 chains and 86 links a point in the middle of the Olive street plank road; at 42 chains and 22 links a branch five links wide, runs southwest; at 49 chains and 62 links a stone 13 inches long, nine inches wide, five and a half inches thick, at the intersection with the west boundary of section 16, which is also a line of James Conway's survey, from which the northwest corner of section 16 and a corner to the James Conway survey bears northerly 80 links distant; at 71 chains and 12 links a branch five links wide, runs southwest; at 82 chains and 79 links a branch five links wide, runs southwest; at 110 chains and 96 links the western edge of Grand Avenue; at 112 chains and 16 links the eastern edge of Grand Avenue; and at 116 chains and 98 links a stone 15 inches long, 8 inches wide, and 4 inches thick, the northeast corner of Louis Lacroix's survey, and the southeast corner of this survey; thence north 28 degrees and 45 minutes east, four chains and 37½ links to the beginning corner.

Interferences of Survey No. 1,663 *with other Surveys.*

Statement of the Interferences of Survey No. 1,663 with other Surveys previously made.

The following surveys are founded upon certificates issued by Frederick Bates, United States recorder of land titles in the Territory of Missouri, under the provision of the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, by earthquakes."

1. Survey No. 2,500, certificate No. 161, issued to Joseph Hunot, or legal representatives, for 480 acres, on the 12 of Au-

gust, 1816; located on the 16th of June, 1818, by Rufus Easton; surveyed by Joseph C. Brown on the 23d June, 1819; patent certificate No. 404 issued on the 2d of February, 1833, by the recorder of the State of Missouri. Area of interfering part = 0.41 acres.

2. Survey No. 2,712, certificate No. 348, issued to James Conway, or legal representatives, for 200 arpens, on the 20th November, 1817; located on the 16th of June, 1818, by Taylor Berry and Matthias McGirk; surveyed by Joseph C. Brown on the 23d June, 1819; patent certificate No. 322 issued by the recorder of land titles on the 20th May, 1823. Area of the interfering part = 17.19 acres.

3. Survey No. 2,692, certificate No. 19, issued to Joseph Genereux or legal representatives, for 160 acres, on the 12th of November, 1815; located by Joshua Barton on the 12 December, 1817; surveyed by Joseph C. Brown on the 23d June, 1819; patent certificate No. 318, issued by the recorder of land titles on the 4th of February, 1823. Area of interfering part = 4.73 acres.

4. Survey No. 2,499, certificate No. 145, issued to Martin Coontz, or legal representatives, for 400 acres, on the 18th of September, 1816; located by John McKnight and Thomas Brady on the 29th of May, 1818; surveyed by Joseph C. Brown in July, 1818; patent certificate No. 309, issued by the recorder of land titles on the 17th of November, 1822. Area of the interfering part = 0.42 acres.

5. Section 16 reserved for the schools, surveyed in the year 1818 by Joseph C. Brown. Area of the interfering part = 28.38 acres.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, July 17th, 1857.

The foregoing plat and description of survey No. 1,663 are correctly copied from the approved plat and description of said survey, recorded on pages 286, 287, and 288, of record book "F," on file in this office.

LOUGHBOROUGH,
Surveyor General.

To ADOLPHE RENARD, Esq.,
United States Recorder Land Titles.

RECORDER'S OFFICE,
St. Louis, 1 *August,* 1857.

I have this day issued confirmation certificate No. 140, on the foregoing surveys, according to law and instructions.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in Missouri.

The defendant then gave in evidence the following confirmation certificate No. 140, accompanied by a survey which was a copy of aforesaid U. S. survey No. 1,663, to wit:

OFFICE OF RECORDER OF LAND TITLES,
St. Louis, 1st August, 1857.

Confirmation Certificate No. 140.

It is hereby certified that under the first section of the act of Congress approved on the 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," and the two acts of Congress of the 26 May, 1824, and 27 January, 1831, supplemental or having reference thereto, Pierre Barribeau was confirmed in his claim to sixty arpens of land, situate in the Grand Prairie common-field of St. Louis.

It is further certified that the same has been lawfully surveyed, in conformity with said confirmation in the said common-field, being in township 45 north of the base line, and range 7 east of the 5th principal meridian, in the State of Missouri, as appears from the accompanying plat and transcript of survey numbered 1,663, authenticated and returned on the 17th July, 1857, to this office, by John Loughborough, surveyor general for the district of Illinois and Missouri, to wit: Beginning at A on the plat, the N. E. corner of the survey, and running thence north 61 degrees west, with the northern line of the survey, 116 chains and 78 links to its northwest corner; thence south 28 degrees 45 minutes west, with the western line of the survey, 4 chains and 37½ links to the southwest corner; thence south 61 degrees east, with the southern line of the survey, 116 chains and 98 links to its southeast corner; and thence north 28 degrees and 45 minutes east, with the eastern line of the survey, 4 chains and 37½ links to the beginning corner. Said survey No. 1,663 contains $51\frac{13}{100}$ acres.

And it is further certified that the whole area of said survey is interfered with by surveys previously executed, viz., to the amount of $28\frac{38}{100}$ acres, in section 16, reserved for the schools, and in the following surveys of locations, under the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," to wit, to the amount of $\frac{41}{100}$ acre, in survey No. 2,500, under certificate No. 161 issued to Joseph Hunot, or his legal representatives, for 480 acres; of $17\frac{19}{100}$ acres in survey No. 2,712, under certificate No. 348, issued to James Conway, or his legal representatives, for 200 arpens; of $4\frac{73}{100}$ acres in survey No. 2,692, under certificate No. 19, issued to Joseph Genereux, or legal representatives, for 160 acres; and of $\frac{42}{100}$ acre, in survey No. 2,499, under certificate No. 145, issued to Martin Coontz, or his legal representatives, for 640 acres.

In testimony whereof, I have hereunto set my name on the day and in the year before written.

ADOLPHE RENARD,
U. S. Recorder Land Titles in State of Missouri.

Recorded at pages 137 and 138 of book of confirmation certificate.

Testimony of J. Noise.

The defendant then offered the testimony of Jacquez Noise to prove that Pierre Barribeau, prior to the 20th day of December, 1803, cultivated the land now in dispute as a lot in the Grand Prairie, under circumstances causing the same to be confirmed by the first section of the act of Congress of the 13th of June, 1812.

The plaintiffs objected to the reception of said testimony, on the ground that it was not competent for a party claiming under that section to adduce testimony to show that the subject of confirmation was situated beyond the out-boundary line established by the government.

The court overruled the objection and permitted the testimony to be read to the jury, and the plaintiffs duly excepted.

Agreement.

The said testimony was read as follows:

The following statement of Jacquez Noise, it is agreed, shall be read in evidence upon the trial of the causes in the St. Louis land court of McClure and Hale vs. Matilda N. Taylor and others, and the School Commissioners vs. McLure, in the circuit court, in the event that the court shall determine that the witness could depose in said cases, and be present. The only objections that are or will be urged in opposition to the statement in this:

It is contended by the defendants in the first named case, and by the plaintiffs in the latter named case, that the proof they offered cannot be admitted legally concerning a common-field lot in Grand Prairie, situated as is the one in controversy. This, or a copy, may be used so far as it is relevant and legal, and go to the jury for what it is worth.

Examined in chief by Mr. McLure.

I am seventy-two years old; was born in St. Louis. I know something about the Grand Prairie common-field. They are situated west of the village lands, two miles and a half from here. The Grand Prairie was occupied before my time. All of it was cultivated. A number of common-field lots, some two, some one, and some a larger number of arpens in width, and smaller, were cultivated in said prairie. They were forty arpens long. They were cultivated as far south as the Cul-de-sac fields. That portion between the St. Charles road and Olive street plank-road was cultivated. The same fence that extended along 4th street enclosed the Grand Prairie, Cul-de-sac, and Barrier des Noyers fields. It extended out so as to embrace them all. The Grand Prairie common-fields were divided from each other only by a furrow made with a plough. Their length was from east to west forty arpens.

From the west end of St. Louis fields there was a distance of thirty arpens to the east end of Grand Prairie fields. The east end of the Grand Prairie fields was about two and a half miles from the village of St. Louis. The people who cultivated those fields resided in St. Louis. The cultivation was prior to the change of government. A great many cultivated there. Barribeau was one; Lacroix, Laroche, Marie, Provenchere, who was the last one on the south next to Cul-de-sac, Chancillier, Condé and others. Condé lot was situated in the Grand Prairie. It was south of St. Charles road that Chancillier cultivated. The Condé lot was south of Chancillier. There were several lots between Condé and Chancillier. Next south of Condé was Parent and Berrites. Next Baribeau. Parent and Benites was between Baribeau and Condé. There was but one between Condé and Baribeau, which was Benites and Parent's lot. Benito married Fostin's daughter, and got half his lot. Fostin's lot was the same as Parent just named. Lacroix was next south of Barribeau. Laroche was next south of Lacroix. I was out on the Grand Prairie two weeks ago. I was there four or five times within a year. I know where Mr. McLure's house is; it is situated on the lot cultivated by Baribeau; it was certainly on Baribeau's lot. I know where John Hogan's house is; it is on Condé's lot. Those lots were cultivated until the common-field fence fell down about fifty-five, fifty-six, or fifty-seven years ago.

Crosss-examination.

Cross-examined by Willis L. Williams:

I knew all those who cultivated the Grand Prairie fields prior to the change of government. I knew those I mentioned as cultivators in the Grand Prairie I mentioned in my examination in chief; I knew all the field-lots, one just as well as the others; I knew how large they were; the common-field fence started at a fort on the Mississippi river; it went up to 4th street west; it then went down to another fort, south; then west to Cul-de-sac; then to Barrier Des Noyers; then to join Vide Poche; that fence enclosed the Grand Prairie, Cul-de-sac and Barrier Des Noyers fields; there was no fence west of the Cul-de-sac, that run north so as to include the Grand Prairie field. The first lot south of the St. Charles road was Descherre's; it was one arpent wide; next, going south, was Deschemp's; it was an arpent or an arpent and a half wide; the next south was Kincereau's; it was two arpens wide; next south was Mad. Bejou's; it was two arpens wide; Chancillier's was next; it was two arpens wide; Colne's was next; it was a pretty good piece of ground, thick, two arpens; Dunegant was next; it was one arpent wide; Jacques Mareschal was next; it was one arpent wide; Bequet's was next, one arpent wide; Dobete's was next, one arpent wide; François Mareschal's was next, half an arpent wide; Simon-

eau's was next, one arpent wide; Francis Moreau was next, one arpent wide; Condé's was next, two arpens wide; Parent & Benito's next, each one arpent wide; Baribeau's was next; it was a good , I think two arpens wide; Lacroix was next, one arpent wide. I know where the plank road is; have passed there often; Lacroix's lot was next north, adjoining the plank road; I don't know whether the plank road passes *or* Laroche or Lacroix's lot; it is between them; Provenchere's lot was the last one south in the Grand Prairie, one arpent wide; next north was Marie, two arpens wide; Laroche was next north, two arpens wide; Lacroix next north, one arpent wide. I am sure there was no one in the Grand Prairie field cultivating south of Provenchere. I am sure all the Grand Prairie fields I have mentioned were of the size I have named, and situated, with reference to each other, as I have stated. I saw all those whom I have named cultivate their fields, and helped many of them cultivate myself; I saw Baribeau cultivate there; would not say so if I had not seen him; Condé's son-in-law cultivated there; his name I have forgotten; I did not know Condé; I was too young to know him, though Condé was living; I never said, in a deposition, that I saw Condé cultivate there; I never said in any testimony anywhere, that I saw Condé cultivate that land; Charles Sanguinette cultivated the Condé's land; there was no fence along the eastern line of Grand Prairie common-field; I was born in St. Louis, don't know the year; I do not remember Condé; I was too young; I think he was alive when I was born; have heard my mother speak of him; he was a doctor. I knew Marie; saw him buried. I knew Dechene; I knew Deschamps; he died at St. Charles; I knew Mad. Béjou; I knew Chancillier; he died at St. Charles; I knew Colne; he died at Florissant, very old, one hundred and twenty years; Deschene had a son named Joseph, only one; I knew Depetre; he lived at Florissant; I knew Baribeau; he died twenty-eight or twenty-nine years ago. There were springs and trees in Grand Prairie, and a trois carré, by which I knew the lands that were cultivated in the Grand Prairie when I was a boy; there was a tree on Condé's land, but a long time destroyed; a black pick near Hogan house; no spring on Condé's land; the tree spoken of was destroyed twenty-five or thirty years ago; only one tree on that land; the whole of the Grand Prairie fields ran west, to the Grand Mare; they were forty arpens long; I could tell where Condé's land was, because I always knew it; fifty-five or six years since the fence fell down, and I have been there many times since; after the fence fell down I went out there to shoot and gather hay, &c.; after the fence fell down all the land was in common, for making hay, &c.; there were many sink-holes on the east end of the Grand Prairie fields, right on the trois carré; the sink-holes were right on the east line; the sink-holes were on government land, between the Grand Prairie and St. Louis fields; between the

trois carré of the two sink-holes, in front of same, *and in front of same,* no sink-hole in Colné; had sink-hole opposite; Chancillier had one opposite; Béjou had one opposite to it; Moreau had one opposite to it; some further off, perhaps two or three arpens off; can't say as to Debetre; Simoneau had one opposite to it, very far off; Chancillier's sink-hole was on the government land; there was one right close to the Chancillier land; I do not know whether the sink-hole opposite to Colne's land was on the Colne lot or on the government land, (the sink-hole opposite the Baribeau lot was over in government land,) can't tell how far off; the sink-hole opposite to Condé's land was about fifty paces off, on the government land; there were no trees, as I remember, on the Baribeau land; I could tell where all these fields were, by my knowledge of the land; they were cultivated west so far back as the Grand Mare; some went entirely to the Grand Mare with cultivations; some did not go quite so far, on account of small timber; they made corn, wheat and peas, and all sorts of grains; the old French would not clear up or grub land, as we do; they cultivated the prairie, and if they came to trees they went round them, did not cut them down; Baribeau's land went back to the Grand Mare; he did not cultivate entirely to the Grand Mare, for there was some wood there on his land; Laroche and Marie cultivated back to the Grand Mare, there being Marie all the way, even to Papin's beyond; no one else cultivated so far back as to the Grand Mare, for all the others had trees back next to the Grand Mare, on their lands, and they didn't grub; I didn't know of any trees anywhere except between the trois carré of the Grand Prairie fields and St. Louis fields, and at the Grand Maré; I knew Tayon's land, and Picant's, in Grand Prairie; I knew widow Dodier's; all these lands, and Mad. Béjou and Deschene's, and Chancillier's, and Colne's, and Condé's, Dehetre's, Moreau's, Basileaux, and down to the last one on the south, Provenchere's, all had the same eastern trois carré; I mean, by trois carré, the same straight line, bounding them all on the east; the line, starting with Provenchere on the south, runs north to Mad. Nerdon and Chouteau; was all a straight line, and no offset in it.

Re-examination.

Re-examined by McLure:

Neither Condé nor Baribeau, Chancillier, nor none of them, went further east than the others; all were on a straight line. Condé didn't cultivate to the trois carré; near an arpent there that was rough with brush. When it is wet, there is water in sink-holes; when dry, none. No fence on the west end or north side of Grand Prairie fields; no fence round the Grand Prairie. The fence was made this side, to keep the stock out of the fields. After grain was gathered the fence was down, and the stock went out to graze.

All the stock was fenced and this field left out, which was to prevent the stock from getting to the crops.

WILLIS L. WILLIAMS,
Att'y for Taylor, &c.
C. C. McLURE, *for self and Hale.*

St. Louis, April 27th, 1855.

Plaintiffs admitted, for the purposes of the present trial, that all the title of Pierre Barribeau, or his representatives, in the land in dispute, had become vested in the defendant, and that said Barribeau's claim, as separately surveyed, covered the same.

No further evidence was given on either side.

Instructions asked by Plaintiffs.

The plaintiffs requested the court to give to the jury the following instructions and each of them:

1. The jury are instructed that the several matters of proofs adduced by the plaintiffs, if genuine, are effectual to show that the title to land in dispute was vested in the State of Missouri on the 19th day of July, 1820, and that the same title has become vested in the plaintiffs.

2. The jury are further instructed that the proceedings and proofs before Recorder Hunt, under the act of Congress of 26th May, 1824, read in evidence by the defendant, have no force or effect as against the title of the State of Missouri, acquired in the year 1820.

3. The jury are further instructed, that the survey of the out-boundary read in evidence is to be considered by them as the official and authoritative survey of the out-boundary directed to be run by the act of Congress of the 13th of June, 1812, binding on all parties claiming a confirmation by force of the first section of said act; and that all the evidence adduced by the defendant to show that the lot of Barribeau was situated on the land in controversy, outside of the out-boundary as marked by such survey, ought to be disregarded by the jury.

The court refused to give said instructions or either of them, and to such refusal the plaintiffs duly excepted.

Instructions by the Court on its motion.

The court on its own motion gave the following instructions:

By virtue of act of Congress of March 6, 1820, and the ordinance declaring the assent of the people of the State of Missouri thereto, dated 19th July, 1820, whatever title the United States may have had in the land described in the plaintiffs' petition at the time of the passage of that act, if it be the sixteenth section or a fractional part thereof, passed to and vested in the State of Missouri for the use of schools, and by the act of the legislature of this State, approved March 3d, 1851, and the order of the county

court read in evidence, if you find that order genuine, the plaintiffs have the right to sue for said land; and if you find that the defendant at the commencement of this suit *the defendant* was in the possession of any portion of said land, you should find for the plaintiffs, unless you believe defendant *as* shown a better title, as hereinafter mentioned.

So far as this case is concerned, the defendant admits that at the commencement of this suit he was in the possession of the portion of the premises described in the petition, and the plaintiffs admit that whatever title to the land in the possession of defendant may have been at any time vested in Pierre Barribeau, was at the commencement of this suit, and now is, vested in the defendant.

Instructions given for Defendant.

The court then, on motion of the defendant, gave the following instructions:

1. If the jury find from the evidence that a tract of land, of which the premises of the defendant at the commencement of this suit are a part, was cultivated by Pierre Barribeau prior to the 20th day of December, A. D. 1803; that said Pierre was, at the time of such cultivation, an inhabitant of the town of St. Louis; that said tract of land was situated in the Grand Prairie, in the neighborhood of said town, and was used by said Pierre for the purposes of cultivation, and was one of a series of lots of similar form and character, also used by inhabitants of said town for the purposes of cultivation, and lying adjoining to each other in the same general range of lots, then the plaintiffs are not entitled to recover.

2. If the jury find from the evidence that on the 3d day of January, A. D. 1825, Pierre Barribeau designated the lot, of which the premises in possession of defendant at the commencement of this suit are a part, as being confirmed to him by the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri," on the ground of inhabitation, cultivation, or possession, prior to the 20th day of December, 1803, by proving before the recorder of land titles of said Territory the fact of his cultivation and possession thereof, under the boundaries, extent of said lot, and that said recorder did thereupon issue a confirmation certificate for said lot to said Barribeau, and furnish the surveyor general of said Territory with a list of the lots so proved, in which list was that of the said Barribeau, which lot was afterwards surveyed by said surveyor general, and the survey thereof approved by him on the 18th day of March, 1857, and on the 17th day of July, 1857, returned by him to the office of said recorder, who, on the first day of August, 1857, issued his certificate of confirmation therefor, then the plaintiffs cannot recover in this suit.

To the giving of the forementioned instructions the plaintiff duly excepted.

The jury found a verdict for the defendant. Within *within* four days the plaintiffs made the following motion for a new trial.

And now, after the verdict, the plaintiffs move for a new trial, for the reasons—

1. That the court admitted incompetent and illegal evidence for the defendant, to the prejudice of the plaintiffs.

2. That the court misdirected the jury, in matter of law arising on said trial.

FIELD, *for Plaintiffs.*

The court overruled said motion, and the plaintiffs duly excepted.

It is agreed that the public acts referred to in the foregoing bill of exceptions may be read in any appellate court, from any printed copy published by authority. It is further agreed that the amount in controversy in this suit exceeds two thousand dollars. This bill of exceptions allowed.

J. R. LACKLAND, *Judge.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, Stephen Rice, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be a true transcript of the record and proceedings in the above entitled cause, as fully as the same now remain on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office in the city of St. Louis, this 27th day of January, A. D. 1858.

[L. S.]

STEPHEN RICE, *Cl'k.*

Afterwards, in said supreme court, at the March term, 1858, the attorneys for the plaintiffs in error appeared and suggested the death of William Milburn, one of said commissioners, and moved the court for a rule on said defendant in error to show cause at the next term of this court, if any he have, why the writ of error in this cause should not be prosecuted in the name of the surviving plaintiffs in error. And thereafter, during the term aforesaid, the court granted said rule, and ordered the cause continued until the next term.

Rule.

And afterwards, on the third day of September, in the year aforesaid, there issued from the office of the clerk of said court a rule, in words as follows:

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the Sheriff of St. Louis County, in said State, greeting:

Whereas, in the case of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section, township forty-five north, range seven east, plaintiffs in error, against Christopher C. McLure, defendant in error, it has been represented to our supreme court of said State, at the March term, in the year 1858, that since the return of the writ of error in said cause into said supreme court, and before an assignment of errors had been filed in said cause, the said William Milburn has departed this life:

These are, therefore, to command you that you summon Christopher C. McLure, said defendant in error, to be and appear before our said supreme court on the first day of the next term thereof, to be begun and held at the court-house in the city of St. Louis, on the third Monday in October next, to show cause, if any he have, why the writ of error aforesaid should not be prosecuted in the name of the surviving plaintiffs in error, the said William Glasgow, junior, and the said William C. Taylor; and have you then there this writ, with your return endorsed thereon.

In testimony whereof, I hereto set my hand and the seal of said supreme court at office in St. Louis, this 3d day of September, A. D. 1858.

[SEAL.]

WM. S. GLANVILLE, *C'k.*

Sheriff's Return.

Said writ was returned the 9th day of September, 1859, with the endorsement of the sheriff thereon, as follows:

Executed this writ in St. Louis county, by delivering a copy of the same, as furnished by the clerk, to Trusten Polk, attorney for the within named C. C. McLure.

M. S. CERRE, *Sh'ff.*
By GEO. N. STEVENS, *D'y.*

Appearance of Defendant.

Afterwards, at the October term, 1858, the following appears of record in this cause, to wit:

In obedience to the command of the rule on the said Christopher C. McLure, granted at the last term of this court, on motion of the said William Glasgow, junior, and the said William C. Taylor, surviving commissioners and plaintiffs in error in this cause, now appears the said defendant in error, by his attorney, and consents that this cause be revived and prosecuted in the name of the aforesaid surviving commissioners, the said William Glasgow, junior, and the said William C. Taylor; and the said defendant

further consents that this cause be continued until the next term of this court. Thereupon, the cause is continued.

Assignment of Errors.

Afterwards, at said term, the said plaintiffs in error appear and file an assignment of errors herein, which is as follows:

And the said surviving plaintiffs in error now come and say, that in the record it appears the court below committed the following errors:

1. In admitting illegal evidence tendered to the jury by the defendant below.
2. In refusing proper instructions to the jury, prepared on behalf of the plaintiffs below.
3. In giving to the jury improper instructions, objected to by plaintiffs below.
4. In rendering judgment for the defendant below.
5. In many other particulars appearing in the record.

Wherefore the plaintiffs in error pray that the judgment be reversed, and that they be restored, &c.

By their attorneys,

FIELD & BATES.

Joinder in Errors.

To which defendant in error, by his attorney, joined in error as follows:

Defendant in error says that there is no such error in the record of proceedings in this cause as above assigned.

T. POLK,
For Def. in Error.

Argued and Submitted.

Afterwards, at the March term, 1859, the parties appeared by their attorneys and argued this cause, and submitted it to the court for decision.

Judgment.

Afterwards, at the aforesaid term, on the 27th day of May, 1859, judgment was rendered in this cause by said supreme court, in words as follows:

Error to Saint Louis Circuit Court.

WILLIAM GLASGOW, Junior, and WILLIAM C. TAYLOR, Commissioners of the 16th section, township 45 north, range 7 east, Pl'ffs in Error,
vs.
CHRISTOPHER C. MCCLURE, Defendant in Error.

Now, at this day, come again the parties herein by their attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by said circuit court rendered, be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the court, that the said defendant in error recover against the said plaintiffs in error his costs and charges herein expended, and have execution therefor.

Opinion of Sup. Court.

On rendering said judgment the court delivered a written opinion, which is in words and figures as follows:

Glasgow and al., comm'rs, &c., vs. C. C. McClure.

This case involves precisely the same question determined in the case of Milburn and others vs. Hardy, at the present term. The judgment is consequently affirmed. The other judges concur.

W. B. NAPTON.

Bond on Writ Error to U. States Sup. Court.

Afterwards, on the 23d day of June, 1859, said plaintiffs filed a bond, which is as follows, to wit:

Know all men by these presents, that we, James A. Rogers and R. M. Field, are held and firmly bound unto Christopher C. McLure, in the full and just sum of five hundred dollars, to be paid to the said Christopher C. McLure, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas lately, at the March term, 1859, of the supreme court of the State of Missouri, in a suit depending in said court between William Glasgow, jr., and William C. Taylor, surviving commissioners of the 16th section, in township 45 north, of range 7 east, plaintiffs, and Christopher C. McLure, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said plaintiffs shall prosecute*d* said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

JAMES A. ROGERS, [SEAL.]
R. M. FIELD. [SEAL.]

Approved by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 23d day of June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court within and for the State of Missouri, held at St. Louis, certify that the foregoing is a full, true, and perfect transcript of record and proceedings of said court in the case of William Glasgow, junior, and William C. Taylor, surviving commissioners of the sixteenth section, township 45, range 7 east, plaintiffs in error, against Christopher C. McLure, defendant in error, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of said [SEAL.] court, at office in St. Louis, this 2d day of August, 1859.

WM. S. GLANVILLE, *Clerk.*

Citation.

The United States of America to Christopher C. McLure, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Scott, presiding judge of the supreme court of the State of Missouri, this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM SCOTT.

Received a copy of the within citation, which is hereby accepted as service of the same, to have the same effect as if served on by the proper officer at this time.

St. Louis, October 26, 1859.

C. C. McLURE.

Assignment of Errors.

In the Supreme Court of the United States—December Term, 1859.

WILLIAM GLASGOW, JR., and WILLIAM C. TAYLOR, surviving commissioners, &c., Plaintiffs in Error,
vs.
CHRISTOPHER C. McLURE, Defendant in Error.

And now come the plaintiffs in error, and say that for causes of error in the judgment and proceedings below, they assign the following, viz:

1. The court below admitted improper and illegal evidence to the jury in prejudice of the rights of the plaintiffs, and notwithstanding their objections to the same.

2. The court below gave improper and illegal instructions to the jury to the prejudice of the plaintiffs in error.

3. The court below refused proper and legal instructions to the jury moved on behalf of the plaintiffs in error.

4. The court below gave judgment for the defendant in error, whereas it manifestly appears from the record that judgment should have been given for the plaintiffs.

Wherefore the plaintiffs pray for a reversal of the judgment, and that they be restored to their just rights.

By their attorney,

LOUIS G. PICOT.

Filed 9th December, 1859.